IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

RCRev..No. 354 of 2005()

RCA.161/2004 of D.C. & SESSIONS COURT,KOZHIKODE, RENT CONTROL APP.AUTHORITY
RCP.11/2000 of ADDL.M.C.,KOZHIKODE-I, RENT CONTROLLER
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PETITIONER IN RCR-APPELLANT IN RCA-RESPONDENT IN RCP

MOIDEENKOYA,S/O.MOOSA,
PANTHAKKIL VEEDU,ELATHUR AMSOM DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

RESPONDENTS: RESPONDENT IN RCR-RESPONDENT IN RCA-PETITIONER IN RCP

CHERUKUDI MUTHUVAYAL SREEDHARAN,
S/O.KANARAN,ELATHUR AMSOM DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IA NOS.2501 OF 2005 & 2811 OF 2005 IN RCR NO.354 OF 2005

DISMISSED

SD/-K.BALAKRISHNAN NAIR,JUDGE

28.11.20007 SD/-K.P.BALACHANDRAN,JUDGE

TRUE COPY

PA TO JUDGE

K.BALAKRISHNAN NAIR & K.P.BALACHANDRAN, JJ.

RCR No.354 of 2005

Order

Balakrishnan Nair, J.

The revision petitioner is the tenant and the respondent is the landlord. The application was filed under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 by the landlord, seeking eviction of the tenanted premises. The scheduled building is a shed, measuring 4.11x5.33 metres, put up in half cent of land. The said plot of land is part of a five acre coconut garden owned by the landlord. It is on the banks of Korappuzha. The tenant took the shed on lease in 1984 and he is using it for sorting fish before marketing them.

2. The landlord claimed the building on the ground that he wanted the shed for storing coconuts and manure. He has no other building in his possession for the said purpose. The tenant is not doing any business in the shed and he is not dependent on the income from the shed. There are other sheds available in the locality to which, he can shift also. On the above pleadings, the eviction was sought. The tenant, who is the revision petitioner,

resisted the application, contending that the landlord has got other sheds in his possession. At any rate, he can construct another shed in the five acre garden. The tenant is solely depending on the income from the tenanted shed. No other shed is available in the locality, to which he can shift his business. So, he prayed for dismissal of the application.

3. Both the authorities, the Rent Controller and the Appellate Authority allowed the application under Section 11(3) of the Act. Hence this revision. The prayer under Section 11(2)(b) was not pursued by the landlord.

4. The revision petitioner attacks the finding regarding the bona fide need by urging that from 1984 onwards, the landlord was using other facilities for storing the coconuts and manure. It is not a new need, which has come into existence now. So, the present claim made for the shed for his use is only a convenient ruse to evict him. But, even if the landlord has got other facilities for the purpose of storing coconuts and manure, there is nothing wrong in his claiming a building in the garden land itself. So, we are of the view that the Authorities below have rightly upheld the bona fide need urged by the landlord. It is common case that the first limb of the second proviso to Section 11(3) of the Act has been concurrently held by both the authorities in favour of the

tenant. But the second limb, concerning the availability of suitable premises in the locality has been found against him.

5. The Rent Controller held that the tenant has admitted that there are other sheds available in the locality, which can be used for the sorting of fish. They are at a distance of 250 metres from the present shed. Relying on this admission, the RCP was allowed. The Rent Control Appellate Authority also relied on the said statement of the RW1 regarding the availability of other sheds in the locality at a distance of 250 metres. The learned counsel for the revision petitioner vehemently attacked the said finding. According to him, there is no such admission from his part. An isolated statement made by the RW1 in his deposition has been taken out of context and misread. The learned counsel also referred to the Commissioner's report, wherein the Commissioner has observed that the landlord did not point out any specific shed available in the locality. The said statement in the Commissioner's report has been reiterated by the Commissioner while he was examined as CW1. The learned counsel also took us through the evidence of PW1 wherein the availability of other buildings in the locality has been mentioned by the PW1, the landlord. It is pointed out that the landlord does not point out any particular building. So,

according to the learned counsel, in the totality of the evidence on record, the statement of the tenant regarding the availability of other sheds in the locality has to be examined. According to him, it cannot be said to be an admission. He has never stated that other sheds are available for occupation in the locality and they are suitable for his occupation. Therefore, the finding of the authorities below on the second limb of the second proviso to Section 11(3) is unsustainable, it is submitted.

6. It is true, the landlord has only stated in his chief examination that there are other buildings in the locality available for the use of the tenant. In the cross examination, we notice that only one question was put to him, suggesting that he is making a false statement on this aspect. The tenant, in his deposition, has mentioned about the existence of other sheds suitable for the business which is available at a distance of 250 metres from the petition scheduled shed.

7. The burden to prove the ingredients of the second proviso to Section 11(3) is heavily on the tenant. The tenant has not stated in his examination that those sheds available are presently occupied by others and therefore, they are not available for him to take on lease. There is no such mention in the re-

examination also. In other words, the tenant has failed to prove that the building stated to be in existence suitable for the business are not available for his occupation. In view of the above evidence on record, we are of the view that the finding of the authorities below on the second limb of the second proviso to Section 11(3) is a plausible view on facts, with which, we cannot interfere under Section 20 of the Act. We find it difficult to describe the said finding as perverse or based on no evidence. In the result, the RCR fails and it is dismissed.

8. The learned counsel for the petitioner prayed for some time to vacate the scheduled building. We heard the learned counsel for the landlord also on this point. Having regard to the facts of the case, the petitioner is granted four months' time from today to vacate the premises on condition that he files an unconditional undertaking in the form of an affidavit, undertaking to vacate the premises within four months from today. The affidavit in this regard shall be filed within three weeks from today. The petitioner shall clear the arrears of

rent, if any due and also pay the rent payable from time to time, till the shed is vacated.

K.BALAKRISHNAN NAIR,JUDGE

28.11.2007 **K.P.BALACHANDRAN, JUDGE**

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